

PETITION -- HOUSE

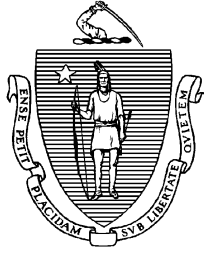
CHIEF SPONSOR:

Representative Gobi of Spencer

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts
in General Court assembled.*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill or resolve.

[illegible]



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT PROTECTING THE NATURAL AND HISTORIC RESOURCES OF THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. It is hereby declared to be the policy of the commonwealth that watershed lands, lands or easements taken or acquired for natural resource purposes, consistent with Article 97, are a vital and indispensable public natural and historic resource and, therefore, that there shall be no net loss of lands or easements taken or acquired for public natural resource purposes as a result of any disposition or change in use of these lands, except as provided in section 8 of this chapter.

SECTION 2. As used in this chapter, except as otherwise indicated, the following words shall have the following meanings:—

“Alternatives analysis”, a description and analysis of alternatives to the disposition or change in use of or easements protected under article 97 of the amendments to the constitution including, but not limited to: a discussion of all feasible alternatives; a discussion of the alternative of not using any lands originally acquired for natural resource purposes, which includes a discussion of the other alternatives as compared to this alternative as a baseline; a discussion of the appropriateness of other alternatives for the proposed use; an analysis of the feasible alternatives in light of relevant statutes, regulations, executive orders and other policy directives; an analysis of the principal

differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts; and a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

“Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution.

“Change in use” or “used for other purposes”, diversion of lands or easements protected under Article 97, or a portion thereof, from existing use to any use that is inconsistent with the purposes of Article 97.

“Disposition” or “disposed”, the transfer of physical or legal custody or control of lands or easements, or a portion thereof by conveyance, taking by eminent domain, lease for any term, granting or taking of interests in land, or any other means of transfer or change of legal or physical control, regardless of whether the transfer is the same or different uses, or consistent or inconsistent purposes, except that (1) the issuance of a nonexclusive revocable license or permit for a term not to exceed 5 years, and (2) the issuance of a license under chapter 91 , shall not be considered a disposition.

“Lands or easements”, lands, easements, conservation restrictions, agricultural and watershed preservation restrictions, and preservation restrictions, as defined in section 31 of chapter 184, and other restrictions or conditions contained in a deed, grant or other instrument purporting to transfer or convey an interest in land, regardless of the term of such easements, restrictions or conditions.

“Mitigation”, measures taken to ensure that the proposed disposition or change in use does not result in a net loss of lands or easements taken or acquired for natural resource purposes, measured by acreage or value. The value shall be the full and fair market value

or the value of the property as would be used in the proposed disposition, whichever is greater. Interests in land taken or acquired for mitigation shall be held solely for natural resource purposes. Any deed or other instrument conveying an interest in land pertaining to lands or easements to be taken or acquired for natural resource purposes shall contain a clear statement of those purposes. All interests in land taken or acquired as mitigation must be consistent with any local master plan written under section 81D of chapter 41, any community preservation plan written under chapter 44V, or any open space and recreation plan of the municipality or municipalities where the proposed disposition or change of use is to occur.

“Natural resource purposes”, the purposes described in Article 97.

“Owner”, the agency, municipality or political subdivision that owns or has care, custody and control of the lands or easements for which there is a proposed change in use.

“Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, rental, rental purchase, lease, taking by eminent domain or otherwise by the commonwealth, any of its political subdivisions, and bodies politic, and any instrumentality thereof, or through use of public funds, including so called land bank funds.

SECTION 3. The policy of the general court is not to enact legislation to allow a disposition or change in use of land or easements acquired for natural resource purposes under Article 97, unless the legislation:-

(a) is accompanied by documentation demonstrating that the owner or his designee has: (i) conducted an alternatives analysis; (ii) determined that, for the proposed purpose to be achieved, no feasible alternative exists and that the area of lands or easements to be

disposed of, or used for other purposes, has been minimized to the extent practicable; (iii) provided mitigation; (iv) demonstrated that the proposed disposition or change of use will, to the extent feasible, avoid or minimize damage to the environment of the subject lands or easements and adjacent lands or easements; (v) certified that the disposition or change of use of the subject lands or easements is not subject to review under sections 61 to 62H, inclusive, of chapter 30, and regulations adopted under those sections, or provide documentation certifying whether those sections have been complied with, including a copy of the certificates of the secretary of environmental affairs and the environmental impact report, where applicable; (vi) certified that the proposed disposition or change in use is not inconsistent with any restriction imposed, by deed or a condition of a gift, on the lands or easements to be converted, as determined by legal counsel; (vii) provided correspondence from the historical commission certifying whether the subject lands or easements are listed or appear eligible for listing on the register of historic places; (viii) given public notice and provided a hearing regarding the change in use; and (ix) provided a copy of the most recent deed for the transfer of the fee interest in the lands or easements and a plan or sketch of the lands or easements that indicates the portion to be disposed or used for other purposes.

(b) contains: (i) a specific description of the subject lands or easements; (ii) a statement of the present uses of the lands or easements; (iii) a statement describing the purposes for which the land was acquired; (iv) a statement of the proposed uses of the land and easements, including whether these uses are public or private in nature; (v) in the case of a disposition, the party to which there will be a transfer of physical or legal

control of lands or easements; (vi) a statement describing the mitigation that will be provided.

SECTION 4. The secretary of environmental affairs shall develop guidelines for use by municipalities in conducting an alternatives analysis and identifying mitigation lands that constitute compliance with section 3. These guidelines may include, but are not limited to, the nature, size, and location of the proposed mitigation lands.

SECTION 5. Sections 1, 3 and 4 and the definitions of alternatives analysis and mitigation in section 2 shall not apply to a disposition or change in use of lands or easements originally taken or acquired for natural resource purposes to be used by a municipality for the construction of a capital construction project, as defined in chapter 70B, in those municipalities with a population of 90,000 or more persons or a population density greater than 9,000 persons per square mile, as determined by the latest federal census. In this case, the municipality shall: (i) follow all procedures required of municipalities seeking school building assistance funds under said chapter 70B; (ii) conduct a modified alternatives analysis; and (iii) provide reasonable mitigation, as determined by the municipality, which may include, but need not be limited to: payment by the city or town to fund natural resources restoration activities within the municipality or to purchase of lands or easements to be designated for natural resource purposes; and continued public access to the subject lands, including, but not limited to, the use of trails, pedestrian walkways, open spaces, or recreation facilities; provided that, continued access to subject lands is not the only mitigation. (b) The secretary of environmental affair shall make recommendations to the school building advisory board, established pursuant to section 3A of chapter 70B, to assist the board in writing guidelines to be used

by municipalities in conducting a modified alternatives analysis and in determining what should be used as reasonable mitigation to be in compliance with this section. The recommendations may consider the types and locations of potential school projects and the difficulty of siting school facilities in dense, urban areas in which there exists a shortage of municipally owned sites, a shortage of available replacement lands or easements, and where there are increased costs for construction and renovation.

SECTION 6. The joint committee on local affairs and the joint committee on state administration shall file annual reports by August 15 of each calendar year with the clerks of the senate and house of representatives detailing their activities on all bills referred to them that involve dispositions or changes in use of lands or easements taken or acquired for natural resources purposes under this chapter.

SECTION 7. This act shall take effect 120 days after its passage.